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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, SUITE 555
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**MINUTES
KAUAI / NIIHAU ISLANDS BURIAL COUNCIL MEETING**

DATE: TUESDAY, AUGUST 2, 2005
TIME: 9:00 A.M. (MEETING-SITE VISITS)
PLACE: KEALIA KAI CLUB HOUSE
2787 KAPOLI ST., KEALIA, HAWAII 96751

ATTENDANCE:

Members Present: La France Kapaka-Arboleda, Chair
Donna Aana-Nakahara
Mark Hubbard
Grace Kamai
Catherine Pfeffer
Sandra Quinsaat
Leiana Robinson
Barbara Say
Tom Shigemoto
Henrietta Thaxton
Presley Wann

Member Absent: John Kruse (excused)

Staff Present: Nancy McMahon, Kauai Archaeologist
Vince Kanemoto, Deputy Attorney General
Sunny Greer, SHPD Kapolei Office

Guests: Rodney Asada, DHHL
Mike Dega, SCS
Kawai Kuapahi
Hosea Lovell
Jane Lovell
Roland Licon, DHHL Kauai District
Jim Powell, SCS

I. 9:00 A.M. KAUAI/NIIHAU ISLANDS BURIAL COUNCIL SITE VISIT TO KEALIA KAI DEVELOPMENT AND ANAHOLA DHHL LANDS

Chair Kapeka-Arboleda opened the meeting at 9:15 a.m. for members and guests to conduct site visits, first at the Kealia Kai Development and subsequently the Department of Hawaiian Home Lands in Anahola. Historical background information and technical assistance were provided by Dega and Powell of SCS, SHPD Kauai Archaeologist McMahon, as well as Asada and Licona of DHHL.

II. RECESS

The meeting recessed at 11:15 a.m.

III. 11:00 A.M. RECONVENING OF MEETING AT ANAHOLA CLUB HOUSE, OPENING REMARKS

Chair Kapeka-Arboleda reconvened the meeting at 11:33 a.m. at the Anahola Club House, 3900 Kawelo Street, Anahola, Hawaii 96703

ATTENDANCE:

Members Present: La France Kapaka-Arboleda, Chair
Donna Aana-Nakahara
Mark Hubbard
Grace Kamai
Catherine Pfeffer
Sandra Quinsaas
Leiana Robinson
Barbara Say
Henrietta Thaxton
Presley Wann

Member Absent: John Kruse (excused)
Tom Shigemoto (excused)

Staff Present: Nancy McMahon, Kauai Archaeologist
Vince Kanemoto, Deputy Attorney General
Sunny Greer, SHPD Kapolei Office

Guests:

Rodney Asada, DHHL
Thomas De Costa, Construction Management Development
Mike Dega, SCS
Mitch Heller, Coconut Beach Development
Daniel Kanekuni, WCIT Architecture

Kawai Kuapahi
Roland Licona, DHHL
Jane Lovell
Jim Powell, SCS

IV. BUSINESS

Chair Kapeka-Arboleda said she would entertain a motion to move up Agenda Items IV. C& D before Agenda Items IV. A& B, so as to accommodate guests who were patiently waiting for the meeting.

A motion was made to “move up C&D before A&B.” (Say/Quinsaas)

VOTE: ALL IN FAVOR. The motion carried unanimously.

Say commented that there were guests present for Agenda Item IV. E as well.

A motion was made to “move up C, D and E before A&B.” (Say/Quinsaas)

VOTE: ALL IN FAVOR. The motion carried unanimously.

E. BURIAL TREATMENT OF RECENTLY DISCOVERED HUMAN SKELETAL REMAINS ON 20.81-ACRES IN WAIPOULI, NORTH OLOHENA AHUPUAA, KAWAIHAU DISTRICT, KAUAI ISLAND, HAWAII [TMK: 4-3-2:15, 16, & 20]

Information/Recommendation: Discussion of Preparation of Draft Burial Treatment Plan

McMahon said an Inventory Survey was done on this 20.81-acre parcel, and introduced SCS as the archaeological consultants who were present to discuss a draft burial treatment plan for informational purposes only. Dega of SCS distributed maps that identified locations of proposed buildings as well as a map of the preservation area. Dega said that the SCS Inventory Survey included surface survey and excavation. There was evidence of historic disturbance to the landscapes, as well as pre-contact layers and artifacts, including stone tools dated to the early 14th century. The SCS followed an Inventory Survey that was previously done by Rosendahl and Kai in 1988. The former located 3 burials along the coastline. During the SCS survey, 7 burials were found, where there are now 10 known burials on the parcel.

A preservation area on the parcel is being proposed, which would relocate the 7 burials (identified by SCS) into a preserve area. The area would be unobstructed by the buildings, a walled structure, access, and surrounded by indigenous landscaping. Dega said Powell conducted most of the archaeological work during the Inventory Survey and that Dega assisted in the documentation of the burials. Kanekuni of WCIT Architecture was available to address any questions regarding the architectural plans. Kanekuni disclosed that parking has been scaled back so as to give respect to the burials.

Dega said the presentation today was for informational purposes and that they would like to move forward with a Burial Treatment Plan using the material presented today as a model. Chair Kapeka-Arboleda said this was adjacent to the Marriot, after the coconut trees. Hubbard asked for clarification regarding SCS's presentation. Chair Kapeka-Arboleda noted that SCS was presenting their proposal to solicit council input prior to proceeding with their final burial treatment plan.

Say wanted clarification on whether the burials were previously identified. McMahon and Dega affirmed that all 10 burials were found during Inventory Survey, which made them previously identified burials under the council's purview. Deputy AG Kanemoto agreed.

Upon request, Dega pointed out the location where the 3 burials (Rosendahl/Kai 1988) and 7 burials (SCS 2005) were identified, as well as where the Preservation Area was being proposed. He circulated the map to the council members. Dega answered a question that yes, if they find more burials during data recovery and monitoring, the new burials would be relocated to the preservation area. A question was asked regarding the size of the Preservation Area. Kanekuni shared that it would be 20 x 30. Powell said that 12 x 12 would be adequate.

Wann asked about the grades. Kanekuni said a berm runs in front of the ocean. The building pads will be brought up to that point and slope off of that. McMahon asked about trenching. Dega said that 31 trenches were made, measuring 584 meters, about 1600 square feet of trenching, all across the parcel. McMahon asked about the 7 burials. Dega said they are all presumed to be Native Hawaiian, with no historical artifacts associated with them, no fillings in the teeth, and dated to pre-contact times. They are currently kept in place and were documented by GPS. Dega said they would like to return next month for the council's review.

D. TREATMENT OF INADVERTENTLY DISCOVERED HUMAN SKELETAL REMAINS ON DEPARTMENT OF HAWAIIAN HOME LANDS IN ANAHOLA/KAMALOMALOO, KAUAI ISLAND, HAWAII

Information/Recommendation: Discussion of Preparation of Draft Burial Treatment Plan

Powell of SCS said they have been contracted by DHHL to assist and reinter inadvertent burials found on their lands. He and DHHL representatives Asada and Licona were present to solicit council input to culturally address the individuals encountered. McMahon said there were multiple burials found in at least two separate areas on DHHL property.

Powell asked if a single reinterment site would be more appropriate. Chair Kapaka-Arboleda asked if it was determined whether Kamalomaloo was an ahupuaa or an ili. She said that culturally, what comes from one ahupuaa should be buried in close proximity within the ahupuaa. If Kamalomaloo is a separate ahupuaa, then it should take care of its own. The chair advised DHHL clearly identify their future plans for their lands and take an active part of the decision.

Asada said that the lookout point identified by council members during the earlier site visit is a respectful relocation site for the burials because it would provide a breeze and view plane that overlooks the bay and landscape. Powell said that no inventory surveys have been done at the site Asada and the council identified. It would be necessary to do one prior to approach a reinterment site. Powell asked if that was appropriate and if that site was not appropriate, an adjacent area further downwards near the oceanside, where several rocks were aligned would be an alternative. More bones were inadvertently discovered during the site visit, which clearly depicts that time is of the essence. Powell asked the council to send Asada back with the sense of urgency and SCS will implement the council's recommendations.

In relation to the bike path, it would move closer to the established Cane Haul Road and not be intrusive. Chair Kapaka-Arboleda said that the lookout point recommended appears to have an inlay of paved stone work that may be a heiau. On the most northern end, the vantage point is breathtaking. She appreciated DHHL's request for council input and stressed immediate action. The council asked if the DHHL could go back and do historical and cultural information, particularly by soliciting native testimony from knowledgeable people who know about the area. Wann provided information on how the area got its moniker, Crack 14. It was agreed by those present that DHHL would do more background research and update the council at a latter date.

**C. REVIEW OF BURIAL TREATMENT PLAN FOR SITE 50-30-08-1899 AT PALIKU BEACH (DONKEY BEACH), AHUPUAA OF KEALIA, KAWAIHAU DISTRICT, KAUAI ISLAND, HAWAII [TMK: 4-7-04:06]
Information/Recommendation**

Powell of SCS said for that the bike and equestrian path, monies been appropriated from Kapaa to Kealia. Based on the site visit by the council earlier in the day, Powell said he heard consensus that appropriate stonework should be erected on the north-west perimeter to prevent inadvertent motorbikes, horses and campers from entering the preserve area. Following, appropriate signage should be posted as well. Powell said that he will inform the appropriate people that the original plan is still in place, with the aforementioned recommendations. Powell said a cautious alignment of rocks setback within the vegetation could be done, with some signage. The south side slope steep enough to prevent trespassers. Trash also needs to be removed, with minimal disturbance.

The plan was approved years ago and the council was just providing additional recommendations. Deputy AG Kanemoto said a previously approved plan is already in place and the council was just being approached and providing additional recommendations that do not require a formal determination. Powell said he would relay the council's concerns and recommendations to the appropriate people.

**B. BURIAL TREATMENT PLAN FOR AN IDENTIFIED BURIAL ON APPROXIMATELY 0.3-ACRES IN KAPAA, KAPAA AHUPUAA, PUNA DISTRICT, KAUAI ISLAND, HAWAII [TMK: 4-5-02:16]
Information/Recommendation: Discussion of Preparation of Draft Burial Treatment Plan**

Dega of SCS said the plan was submitted to SHPD at the end of May 2005 and was present before the council for information purposes only, with hopes of coming for a determination in future.

(Tape 1, Side B)

Powell said there was a single inadvertent discovered on the property during the construction of the foundation. At the northeast corner of the property, the Northcutt family has created a two-tiered planter. The top tier, which has the plumeria tree, will be the reinterment site for the individual. The second tier will be a planter for medicinal Hawaiian plants. SCS was soliciting

comments for cultural appropriateness in anticipation for a September determination by the council.

Chair Kapaka-Arboleda asked for a legal opinion on whose legally responsibility it was to record reinterment sites at the bureau of conveyances. Deputy AG Kanemoto said that the rules read that the department is responsible for recording. He cited 13-300-38(g), HAR as the department's mandatory duty to record. The chair said this has not been done in the past and needs to be addressed to provide perpetual protection for the burials and document the work that have been done by many people.

Dega shared that on Maui, because SHPD is overwhelmed with their workload, SCS approached the landowner to be responsible for recording the burial with the bureau, so as to provide protection and alleviate the department's responsibilities. Language was inserted to provide for recordation within 60 days following acceptance of the plan, in spite of the rule. Once recorded, it's an encumbrance and runs with the land.

F. UPDATE OF BURIAL REGISTRY

Information: Follow-up on past burial registry requests submitted by the public

Greer reported that four burial registration applications from the island of Kauai that have not been completed have been located, as well as the accompanying documentation. Greer relayed that the SHPD Administrator is in the process of revising policies and procedures as to how the department handles not only burial registrations, but inadvertents, documentation and the like. Outstanding burial registrations and descendancy applications will be contracted out as a personal services contract with a genealogist. The contract needs to be approved and required three quotes are needed prior to moving forward. Greer thanked the council for their patience.

A. ESTABLISHING A COUNCIL POLICY REGARDING THE REASONABLE ADMINISTRATION OF ORAL TESTIMONY, INCLUDING TIME LIMITS ON ORAL TESTIMONY

Greer said that all island burial councils will be entertaining this issue following a recommendation by the Office of Information Practices during the council orientation training. Unless the council sets their own policy, any person can testify for as long as they want. Deputy AG Kanemoto said adopting, by a majority vote, a council policy regarding a maximum time limit pertains to per person, per agenda item. The council has the discretion to allow additional time for a testifier if the council desires. Chair Kapaka-Arboleda asked if the policy has to be announced at the beginning of every council meeting. Greer said that the information could be duly noted on every council agenda. Kanemoto said once adopted, it's a council policy.

There was a motion "that the council set a time limit for oral testimony of three minutes per person, per agenda item, subject to extension at the council's discretion."
(Say/Thaxton)

VOTE: 8 AYES: (Kapaka-Arboleda, Aana-Nakahara, Kamai, Pfeffer, Quinsaat, Say, Thaxton, Wann. 1 ABSTAIN: Robinson) MOTION PASSES.

V. ANNOUNCEMENTS

The chair requested that McMahon provide the council with updates on the Frank Richie property. Deputy AG Kanemoto advised that Sunshine Law dictates that discussion cannot proceed unless an item is adequately agendaized. McMahon said that inadvertents do not fall under the council's purview. Deputy AG Kanemoto said that possible future council recommendations would bar discussion absent an agendaized item.

McMahon informed the council that there was an inadvertent discovery during data recovery now owned by Hunter in Wainiha. The burial is disturbed, found 8" below the surface. It is to be disinterred and the owner is looking for a relocation area on site. The construction planned is for a vacation rental.

Also, McMahon shared that two burials were discovered on the Richie Property in Kukuiula, absent an archaeologist due to a falling out. The owner is ready to reinter 7 burials, but they are not complete. The first time, a skull was identified. McMahon requested on-site monitoring during construction. It is not attached to any county permits because the building permit has already been granted. SCS was hired and there was a falling behind SCS and the landowner. The last two burials were discovered by contractors. McMahon said SHPD does not have the authority to force an on-site monitor at this point.

Chair Kapaka-Arboleda said when landowners/homeowners do their own stuff without an archaeologist and are not held accountable, it becomes a problem. She pointed out that Kauai Planning Department has a policy that when it comes to the SMA law, the first house is exempt. They don't do that in Maui. Interpretations by two counties differs.

VI. ADJOURNMENT

Chair Kapaka-Arboleda adjourned the meeting at 12:35 p.m.

Respectfully submitted,

Sunny Greer
SHPD Administrative Assistant